2023INSC733

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3339 of 2023

CENTRAL COUNCIL FOR RESEARCH IN AYURVEDIC SCIENCES & ANR. …APPELLANTS

VERSUS

BIKARTAN DAS & ORS. …RESPONDENTS

J U D G M E N T

J. B. Pardiwala, J.:

1. This appeal by special leave is at the instance of the Central Council for Research in Ayurvedic Sciences (CCRAS), Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy (AYUSH), Government of India (appellant No. 1) and its Director General (appellant No. 2). The two appellants before us were the original respondents before the High Court of Orissa. This appeal is directed against the judgment and order dated 17.12.2020 passed by the High Court of Orissa, Cuttack in W.P. (C) No. 30620 of 2020 by which the High Court allowed the writ application filed by the original petitioner (respondent No. 1) before us, setting aside the order passed by the Central Administrative Tribunal (CAT), Cuttack Bench, Cuttack and thereby holding that the respondent No. 1 herein, namely, Dr. Bikartan Das is entitled to the benefit of enhancement of retirement age from 60 to 65 years as applicable to the AYUSH doctors working under the Ministry of AYUSH.

FACTUAL MATRIX

2. The respondent No. 1 herein was appointed by the Council as a Research Assistant w.e.f. 07.10.1985. The Office Order No. 183 of 1985 dated 11.10.1985 reads thus:

> *"No. P.1-67/86-CRIA/DDSR/Estt./748(5) Dt 11.10.85*
> *OFFICE ORDER No. 183/85*
>
> *Dr. Bikartan Das is appointed as a Research Assistant (AY) with effect from the forenoon of the 7th October, 1985 until further orders in the Central Research Institute (AY), Unit, Bhubaneshwar-9. He will be on probation for a period of two years from this date. He will draw a basic pay of Rs. 425/- per month in the scale of Rs. 425-15-500 PB-15-560-20-700 with usual allowance admissible under the rules.*
>
> *(Dr. PREM KISHORE)*
> *ASSISTANT DIRECTOR (AY) I/C"*

3. The Government of India in its Ministry of Health and Family Welfare *vide* letter dated 01.12.1998 addressed to the Council, approved the decision of the Council to enhance the benefit of extension in age of retirement from 58 years to 60 years in respect of employees of the Council w.e.f. 31.05.1998 in accordance with the guidelines issued by the Department of Personnel and Training (DoPT) *vide* O.M. No. 25012/8/98-Estt. (A) dated 13.05.1998.

4. On 27.09.2017, the Union Cabinet took a decision to enhance the age of superannuation up to 65 years for the AYUSH doctors working under the Ministry of AYUSH (respondent No. 2 herein) and in the Central Government Health Scheme (for short, 'the CGHS') Hospitals.

5. By way of letter dated 31.10.2017, the Ministry of AYUSH clarified that the effect of the Cabinet decision referred to above would be applicable

only to the AYUSH doctors directly working under the Ministry of AYUSH and in the CGHS Hospitals. It was clarified that the decision to enhance the age of superannuation up to 65 years would not be applicable to the autonomous bodies functioning under the Ministry of AYUSH. The letter dated 31.10.2017 addressed by the Ministry of AYUSH to the Director General, CCRAS and CCRUM, reads thus:

“ FTS No. 32797/2017
Ministry of Ayurvedic, Yoga & Naturopathy, Unani, Siddha & Homoeopathy (AYUSH)
(Research Desk)

‘B’ – Block, GPO Complex,
AYUSH Bhawan, Behind the INA Market,
New Delhi – 110023
Dated: 31st October, 2017

To

The Director General,
CCRAS and CCRUM
61-65, Institutional Area,
Opposite “D” Block,
Janakpuri, New Delhi – 110058.

Subject: Enhancement of superannuation age to 65 years -reg.

Sir,

I am directed to say that the Ministry has been receiving a number of representations from various officials of the Councils regarding enhancement of superannuation age to 65 years. It is stated that as per Press Information Bureau the Union Cabinet has taken the following decision:-

“The superannuation age has been enhanced to 65 years in respect of doctors under the administrative control of the respective Ministry/Department [M/o AYUSH (AYUSH

Doctors), Department of Defence (civilian doctors under Directorate General of Armed Forces Medical Service), Department of Defence Production (Indian Ordnance Factories Health Service Medical Officers), Dental Doctors under D/o Health & Family Welfare, Dental doctors under Ministry of Railways and of doctors working in Higher Education and Technical Institutions under Department of Higher Education]".

2. The decision of the Cabinet is applicable to the AYUSH doctors directly working under the administrative control of Ministry of AYUSH i.e. AYUSH doctors working under CGHS. The decision of the Union Cabinet is not applicable to autonomous bodies functioning under Ministry of AYUSH i.e. Research Councils/National Institutes.

3. All such representations are therefore being sent to the respective Councils. It is requested that the Councils may inform them accordingly.

Yours faithfully,

N. K. Lakhanpal
Senior Consultant"

6. By order dated 24.11.2017, the Ministry of AYUSH enhanced the age of superannuation to 65 years for the AYUSH doctors working in the Ministry of AYUSH and in CGHS Hospitals w.e.f. 27.09.2017. The order dated 24.11.2017 reads thus:

" F.NO. D.14019/4/2016-E-I(AYUSH)
Government of India
Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homoeopathy

AYUSH Bhawan,
'B' Block, GPO Complex,
INA, New Delhi - 110023
Dated, the 24th November, 2017.

ORDER

The President is pleased to enhance the age of superannuation of the AYUSH doctors under the Ministry of AYUSH and working in CGHS Dispensaries/Hospitals to 65 years with effect from 27.09.2017, i.e. the date of the approval of the Union Cabinet.

2. The doctors shall hold the administrative posts only till the date of attaining the age of 62 years and thereafter their services shall be placed in non-administrative positions.

(ROSHAN JAGGI)
Joint Secretary to the Government of India
Tel.24651953"

7. By notification dated 05.01.2018, the Ministry of Personnel, Public Grievances and Pensions, DoPT notified the Fundamental (Amendment) Rules, 2018 whereby Rule 56(bb) in the Fundamental Rules, 1922 (FRs) was substituted and the age of superannuation of AYUSH doctors was enhanced to 65 years. The notification reads thus:

"MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS
(Department of Personnel and Training)

NOTIFICATION

New Delhi, the 5th January, 2018

G.S.R. 27(E).—In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President hereby makes the following rules further to amend the Fundamental Rules, 1922, namely :—

(1) These rules may be called the Fundamental (Amendment) Rules, 2018.

(2) In the Fundamental Rules, 1922, in rule 56, for clause (bb), the following shall be substituted, namely:—

"(bb) The age of superannuation in respect of General Duty Medical Officers and Specialists included in Teaching, Non-Teaching and Public Health sub-cadres of Central Health Service, AYUSH doctors, Civilian doctors under Directorate General of Armed Forces Medical Services, Medical officers of Indian Ordnance Factories Health Services, dental doctors working under Ministry of Health and Family Welfare, doctors of Indian Railways Medical Service and dental doctors under Ministry of Railways, doctors of General Duty Medical Officers sub-cadre of Central Armed Police Forces and Assam Rifles and Specialist Medical officers of Central Armed Police Forces and Assam Rifles shall be sixty-five years:

Provided that notwithstanding anything contained in any other rules, above doctors except in Central Armed Police Forces and Assam Rifles shall hold the administrative posts till the date of attaining the age of sixty-two years and thereafter their services shall be placed in Non-Administrative positions."

[F.No.25012/4/2016-Estt.(A-IV)]
GYANENDRA DEV TRIPATHI, Jt. Secy."

8. By letter dated 25.01.2018, the appellant Council circulated the clarification letter issued by the Ministry of AYUSH dated 31.10.2017 referred to in para 5 as above. The letter reads thus:

"F 3-8/2017-CCRAS/Vig/3094 Dated: 25 JAN 2018

To

All the Heads of Institutes/Centres/Units functioning under this Council.

Sub: - Enhancement of superannuation age of 65 years.

Sir/Madam

The undersigned is directed to circulate herewith the clarification on the subject mentioned above received from

Ministry of AYUSH vide letter FTS No.32797/2017 dated 31.10.2017 for information. The contents of Ministry's letter may be circulated among all officers working under your control.

Yours faithfully

(SB MISRA)
Administrative Officer (Vigilance)
For Director General"

It is pertinent to note that the letter issued by the appellant Council dated 25.01.2018 referred to above was never made a subject matter of challenge.

9. The respondent No. 1 herein preferred a representation dated 22.03.2018 addressed to the appellant No. 2 herein with an appeal to enhance his age of superannuation up to 65 years i.e., up to 30.04.2023 instead of 30.04.2018. It appears from the materials on record that the representation preferred by the respondent No. 1 herein before the above was rejected and a notification dated 04.04.2018 was issued by the Council stating that the respondent No. 1 herein would retire w.e.f. 30.04.2018 upon attaining the superannuation age of 60 years. The notification dated 04.04.2018 reads thus:

"F. No. 26-3 / 2018-C.C.R.A.S. / Est. 17

Date: 04.04.2018

Notification

It is hereby notified that

Dr. Bikartan Das, Assistant Director (AYUSH), Central Ayurvedic Research Institute for Hepatobiliary Disorder, Bhubaneswar is retiring from Council service on attaining the

age of superannuation at 60 years on 30.04.2018 (pm). His date of birth is 04.04.1958.

Accordingly, his name will be removed from the list of C.C.R.A.S.

Signature in English Illegible
R.K. Ahluwalia
Dated 27.03.2018
Dy. Director (Administration)
Through Director General"

10. The respondent No. 1 being dissatisfied with the aforesaid went before the CAT, Cuttack Bench, Cuttack by way of Original Application No. 210 of 2018 and prayed for the following reliefs:

"The Hon'ble Tribunal may be graciously pleased to admit the Original Application, call for the records and issue notice to the Respondents and upon hearing the parties declare the impugned letter of clarification of Ministry of AYUSH dtd. 31.10.2017 as under Annexure-4 Series and the letter dtd. 04.04.2018 under Annexure 3 directing the Applicant to retire on 30.04.2018 on attaining age of 60 years, to be illegal, arbitrary unreasonable and discriminatory and quash the same and direct the Respondent to allow the Applicant to continue in the service upto 65 years as per amended rules.

x x x

Pending finalization of the Original Application, the Applicant prays to stay the order under Annexure-3 and allow the Applicant to continue in the service."

11. By order dated 17.04.2018 the CAT issued notice, however, declined to grant any interim relief as prayed for by the respondent No. 1 herein. As CAT declined to grant any interim relief and the respondent No. 1 was to retire on 30.04.2018, he went before the High Court of Orissa, Cuttack by filing W. P. (C) No. 6663 of 2018 questioning the order passed by the CAT declining to grant any interim relief. The High Court passed the following order dated 25.04.2018:

"SI. No. of Order- 03
Date of Order- 25.04.2018

Heard Mr. B. Senapati, learned counsel for the petitioner and Mr. Bose, learned Asst. Solicitor General.

This Writ Petition has been filed by the petitioner challenging the order dated 17.04.2018 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 260/210/2018 wherein the Tribunal while issuing notice directed the opposite parties to file their reply on the interim prayers and regular counter.

As it appears that the Central Government has taken a decision under the Ministry of AYUSH to enhance the age of retirement of the Doctors up to 65 years. However, so far as the petitioner is concerned, since the notice of superannuation was issued to him, he has approached the Tribunal. Since the Original Application is pending before the Tribunal, without expressing any opinion on the merits of the case, we dispose of this Writ Petition with an observation that since the Doctors who are similarly after continuing the age of 65 years after attaining the age of 60 years, let the Petitioner continue in the service and let the notice of superannuation under Annexure-3 shall remain stayed till disposal of the Original Application.

Mr. Bose, learned Assistant Solicitor General submitted that the central government will file their counter within a period of two weeks from today before the Tribunal, in such event the Tribunal may dispose of the Original Application at the earliest, preferably by end of June, 2018. Accordingly, we request the Tribunal may dispose of the Original Application at the earliest/as per its schedule. However, the petitioner shall not claim any equity.

Sd.- S. Panda, J.
Sd.-K.R. Mohapatra"

12. Thus, from the aforesaid, it appears that the High Court protected the respondent No. 1 till the disposal of the original application by the CAT.

By virtue of the aforesaid order, the respondent No. 1 continued in service beyond 30.04.2018.

13. CAT ultimately adjudicated the original application filed by the respondent No. 1 herein and vide its order dated 02.11.2020 rejected the same holding that the respondent no. 1 is not entitled to seek parity with AYUSH doctors in regard to the age of superannuation.

14. The sum and substance of the findings recorded by the CAT may be summarised as under:

(i) The Fundamental Rules notified under Article 309 of the Constitution of India are applicable to the employees working directly under the Government of India. Its applicability to the employees of the Council is on account of Clauses 34 and 35 respectively of the Bye-Laws. This issue was considered by the Hyderabad Bench of the CAT *vide* order dated 04.09.2020, wherein it was observed that-

> "*Clause 34 of the bye-law makes it crystal clear that the Governing Body has to take a decision in regard to the enhancement of the retirement age.* ***The Governing body has no necessity to take a decision in the context of the Ministry of AYUSH, Govt. of India having made it clear that enhancement of retirement age is not applicable to an autonomous body like CCRAS****. Therefore, the G.O.I. rule of not extending the enhancement of retirement age to CCRAS compliments the clauses 35 & 47 of the byelaws. We do not find any error in the decision taken by the respondents in terms of the bye laws.*"
>
> (Emphasis supplied)

(ii) CAT did not accept the respondent No. 1's argument of Clause 35 and application of the Fundamental Rules *mutatis mutandis* to the employees of the Council saying that the clause relates to the general applicability of FRs, Supplementary Rule (SRs) and General Financial Rules (GFRs) to the Council employees; the same is subject to the

provision specific to Clause 34 governing superannuation of the employees of the Council. There is nothing in Clause 35 of the Bye-Laws to have an overriding effect on Clause 34 regarding retirement age.

(iii) Clause 47 of the Bye-Laws makes it clear that for the matters not specifically provided in the Bye-Laws, the rules applicable to the government employees would apply. But since there is a specific provision regarding superannuation in Clause 34, the rules governing government servants in respect of superannuation will not be applicable to the employees of the Council unless it is in accordance with Clause 34 of the Bye-Laws.

(iv) There is nothing in the Cabinet resolution in question and in the amended FR-56(bb) to show that these decisions are applicable to the employees of the autonomous institutions. The assumption of the respondent No. 1 that the FR-56, as amended from time to time, is automatically applicable to the Council employees is not correct since it is subject to the provisions of Clauses 34 & 35 respectively of the Bye-Laws.

(v) There is nothing wrong with the clarification letter dated 31.10.2017. It cannot be stated to be overriding the Cabinet decision in question, and the objection to the letter on that ground is not sustainable. The clarification letter was circulated by the Council by a subsequent letter dated 25.01.2018 among its officers, after issuance of the first amendment to FR-56. This implies that the Council, which is the employer of the respondent No.1, had consciously accepted the clarification of the Ministry. The respondent No. 1 had not challenged the Council's letter dated 25.01.2018 but had only challenged the AYUSH Ministry's letter dated. 31.10.2017.

(vi) There is nothing in the pleadings of the respondent No.1 to show that the amended FR-56(bb) is applicable to the employees of the Council, except for citing the provisions of the Bye-Laws. As per Clause 34 of the Bye-Laws, the rules governing the retirement of the government employees will be applicable to the employees of the Council as adopted by the Governing Body. This means that the unless the Governing Body adopts the changes in rules for the retirement of

government servants, such changes are not automatically applicable to the employees of the Council.

(vii) The CAT placed reliance on the decision of this Court in *DDA v. Joint Action Committee, Allottee of SFS Flats*, reported in (2008) 2 SCC 672 to hold that there are certain specific grounds on which a policy decision can be subjected to judicial review, and in this situation there was no valid ground to challenge the policy decision of the AYUSH Ministry as per the clarification letter dated 31.10.2017.

(viii) In the last, the CAT considered that even if the respondent No.1's contention that he had treated patients was to be accepted, such acceptance could not have negated the decision taken by the Ministry of AYUSH in its clarification letter dated 31.01.2017, which was further accepted by the Council in its subsequent letter dated 25.01.2018.

15. The respondent No. 1 feeling dissatisfied with the aforesaid order passed by the CAT challenged the same before the High Court in W.P.(C) No. 30620 of 2020. The High Court allowed the writ application filed by the respondent No. 1 holding as under:

"On the analysis of the above factual matrix, we find that though the petitioner is functioning as Researcher under the Research Council/ National Institute, but as a requirement for upgrading the research skill, he treats patients in the OPD and IPD. In fact, he performs similar nature of duties like AYUSH doctor. Though his service condition is covered by different laws, but for all practical purposes, the petitioner is performing like a doctor. Though there is a clear-cut distinguishing features between the AYUSH doctor and that of the petitioner. The petitioner herein is also treating the patients like AYUSH doctors in the OPDs and IPDs on regular basis.

The Clause-34 and 35 of the bye-laws extends the force of the argument of the petitioner to be treated as AYUSH doctor, even though he has been appointed as Researcher.

Clauses-34 & 35 of the said bye-laws deal with superannuation which read as under:

> *"34. The rules governing the retirement of employees of the Government of India as amended from time to time or as desired by the Governing Body shall apply to the employees of the Central Council. Provided that an employee can be retained in service after prescribed age of superannuation if he continues to be physically fit and efficient and it is in the interest of the Central Council to retain him in service.*
>
> *35. The Fundamental and Supplementary Rules and General Financial Rules of Government of India as amended from time to time shall apply mutatis mutandis to employees of the Central Council."*

In view of the above, we are of the opinion that the view taken by the learned Tribunal vide its decision dated 02.11.2020 is erroneous.

The learned CAT, Cuttack Bench, Cuttack has failed to consider the petitioner's duty and devotion in treating the OPD and IPD patients. Hence, the order dated 02.11.2020 passed by the learned CAT, Cuttack Bench, Cuttack is liable to be quashed and accordingly, it is quashed."

(Emphasis supplied)

16. Thus, the plain reading of the impugned order passed by the High Court referred to above would indicate that what weighed with the High Court was that the respondent No. 1 herein used to treat patients like AYUSH doctors in the Out-Patient Departments (OPDs) and In-Patient Departments (IPDs) on regular basis and the duty and devotion exhibited by the respondent No. 1 in treating the OPD and IPD patients would entitle him to claim the benefit of the enhanced age of superannuation i.e., up to 65 years. The High Court recorded the said finding despite acknowledging that the respondent No. 1 was appointed as a researcher

under the Research Council and his service conditions were governed by different laws. Of course, the High Court also took support of Clauses 34 and 35 respectively of the Bye-Laws while granting relief to the respondent No. 1.

17. In such circumstances referred to above, the appellants are here before this Court with the present appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANTS

18. Mr. Aman Lekhi, the learned Senior Counsel appearing for the appellants made the following submissions:

a. The issue involved in the present case is the entitlement to seek extension in superannuation age as per FR 56(bb) and its applicability to the appellant Council which is an autonomous body. The said FR has been amended from time to time and the rule applicable in the present case i.e. at the time of the retirement of the respondent No. 1 is of 05.01.2018.

b. The respondent No. 1 was an employee of CCRAS having joined as Research Assistant and his terms of service were governed under the Rules of CCRAS. Subsequently, he was promoted to the post of Research Officer and at the time of superannuation he was holding the post of an Assistant Director.

c. The relevant clauses of CCRAS which are applicable to the facts of the present case are Clauses 25(b), 34, 35 and 47 of CCRAS Bye-Laws which are extracted herein for the sake of convenience:

*"**Appointments***

25.(a)...

(b) Recruitments, appointments and promotions to all posts shall be made according to the recruitment rules laid down by the Governing Body or designated competent authority for the posts. Selection shall be made through the Selection Committees/Departmental Promotion Committees duly constituted with the approval of the respective appointing authority.

Superannuation

*34. The rules governing the retirement of employees of Government of India as amended from time to time **or as desired by the Governing Body** shall apply to the employees of the Central Council. Provided that an employee can be retained in service after the prescribed age of superannuation if he continues to be physically fit and efficient and it is in the interest of the Central Council to retain him in service.*

35. The Fundamental and Supplementary Rules and General Financial Rules of Government of India as amended from time to time shall apply mutatis mutandis to employees of the Central Council.

Xxx xxx xxx

Other Conditions of Service

47. In respect of matters not provided for in these regulations the rules as applicable to Central Government servants regarding the general conditions of service, pay, allowances T.A. and daily allowances, foreign service terms, deputation in India and abroad, etc. and orders and decisions issued in this regard by the Central Government from time to time shall apply mutatis mutandis to the employees of the Central Council."

(Emphasis supplied)

d. A bare perusal of the aforesaid rules indicates that the employees are recruited through a selection committee of the Council and the FRs

will not directly apply where the Governing Body finalises the rules of superannuation.

e. In terms of Clause 34, the Governing Body had decided to fix the age of superannuation to be 60 years on 01.12.1998. The said decision was ratified on 27.01.2000 in the 14th Meeting of the Governing Body of CCRAS as Agenda Item No. GB 14.4.

f. The decision of the Governing Body as aforementioned applied on 30.04.2018 i.e. the date of superannuation of the Respondent.

g. No reference has been made by the respondent No. 1 to the aforementioned decision of the governing body in his representation. In fact, the Respondent relied on Clause 34 of the Bye-Laws which on its terms indicates that the rules governing the retirement of employees of Government of India will not apply in the instant case.

h. Reliance placed by the respondent No. 1 in its representation on the case of Salma Khatoon is equally inapt as the relevant rule in the said case was different from the Clause 34 of Bye-Laws herein. The said case pertained to the Central Council for Research in Unani Medicine ('CCRUM') which is governed by its own rules and regulation and the applicable rule in that case was worded differently. Moreover, the said case is still pending before the High Court of Delhi. The interim order in favour of Salma Khatoon was vacated by this Court in the case of ***Central Council for Research in Unani Medicine v. Dr. Salma Khatoon and Others*** reported as 2020 SCC OnLine SC 1332.

i. The Central Administrative Tribunal, Cuttack Bench ('CAT') rightly held that the assumption of the respondent No. 1 that FR 56 is

automatically applicable is not correct as it is subject to Clause 34 of the Bye-Laws of CCRAS.

j. The very same grounds as aforesaid were urged by the Appellants in the Counter Affidavit filed by them before the High Court of Orissa.

k. While passing the impugned order, the High Court acknowledges that the respondent No. 1 was working as a Researcher and his service conditions were covered by a different clause. Strangely, however, the High Court makes no reference to Clause 34 of the Bye-Laws. This is despite the fact that the appellants had clearly pleaded that the respondent was not entitled to relief in terms of Clause 34 and that FR 56 was not applicable to him. Pertinently, this submission has been recorded by the High Court itself as also the clarification of 31.10.2017 and the separate method of recruitment. These factors were not considered while passing the impugned order.

l. The impugned order of the High Court is unsustainable as it is against the following settled propositions of law:

(i) Even a Constitutional Court cannot substitute the existing service conditions of an employee. ***V.M. Gadre v. M.G. Diwan and Others,*** (1996) 3 SCC 454 para 10 at page 459.

(ii) A writ in the nature of mandamus cannot be issued to frame a policy in a particular manner. ***Census Commissioner and Others v. R. Krishnamurthy,*** (2015) 2 SCC 796 para 25-26 at page 806-807.

(iii) The Court cannot fasten monetary liability on State instrumentality unless it emerges from the rights and liabilities canvassed in the *lis* itself. ***State of Himachal Pradesh and Others v. Rajesh Chander Sood and Others***, (2016) 10 SCC 77 para 88 at page 160.

(iv) Employees of autonomous bodies are governed by their own rules and Bye-Laws and they cannot claim parity with government employees. ***T.M. Sampath and Others v. Secretary, Ministry of Water Resources and Others,*** (2015) 5 SCC 333 para 3 at page 336 & para 15 at page 345; ***State of Maharashtra and Another v. Bhagwan and Others,*** (2022) 4 SCC 193 para 24-26 at page 203-204.

m. The reliance placed by the respondent No. 1 on the judgment of this Court ***North Delhi Municipal Corporation v. Dr. Ram Naresh Sharma and Others*** reported in 2021 SCC Online SC 540 is completely misplaced. The issue in the said case pertained to different dates of enhancement of age of superannuation of AYUSH and CHS doctors of NDMC. In the said case, the policy decision of enhancing the age of superannuation to 65 years was adopted by NDMC for AYUSH doctors but it was applied from a later date which was found to be discriminatory. Whereas, in the present case the appellant is an autonomous body with its own service rules and the government decision was never adopted by the Governing Body at any point of time.

n. The reference made to the appointment of Director of the Institute of Teaching and Research in Ayurveda ('ITRA') in context with the retirement age of 65 years is wholly misplaced. The appointments to ITRA are made as per the provisions of the Institute of Teaching and

Research in Ayurveda Act, 2020. Section 5(e) of the Act, 2020 provides for the tenure of the Director of 5 years or until the age of 65 years whichever is earlier. Hence, the respondent No. 1 who is not covered under the provisions of the said Act cannot claim parity with the employees of ITRA.

SUBMISSIONS ON BEHALF OF THE RESPONDENT NO. 1

19. Mr. Col. R. Balasubramanian, the learned Senior Counsel appearing for the respondent No. 1 made the following submissions:

a. His client is an AYUSH Doctor being fully and duly qualified in Bachelor of Ayurvedic Medicine and Surgery (BAMS). The fact that his client is an AYUSH Doctor is admitted by the appellants in their counter affidavit filed before the CAT. As per the existing rule, those who have completed BAMS from any University of India, which is recognised by the Central Council for Indian Medicine (CCIM) and who have registered under any State Council of Indian Medicine or CCIM, New Delhi are AYUSH Doctors. This is also admitted by AYUSH in their RTI reply.

b. That being a duly qualified AYUSH doctor, the respondent No. 1 was appointed as a Research Associate in the Central Research Institute (Ayurveda), Bhuvaneshwar under the Control of the Ministry of AYUSH, *vide* appointment letter dated 03.10.1985. The terms of appointment specifically stated *inter alia*, in para 2 (vi) & (vii) thereof, that “Private or Consultancy service is strictly prohibited” and that “Other terms and conditions of service will be governed by the rules and instruction applicable to similar personnel under the Government of

India" respectively. Further it was stated that the pay and dearness allowances etc. will be as applicable to the Central Government servants of equivalent status and will be governed by the CCS Rules as amended by the Government of India from time to time.

c. The fact that the Institute where the respondent No. 1was serving is under the 'pervasive control' of the Government/Ministry is admitted by the appellants in their counter affidavit filed before the CAT and also in the Counter affidavit filed before the High Court. Therefore, two factual aspects are admitted and it is beyond any doubt that (i) the respondent No. 1 is an AYUSH Doctor and (ii) the Institute is under the administrative control of the Ministry of AYUSH.

d. In view of the aforesaid admitted facts, it is evident more particularly from the Union Cabinet decision of the appellants that the Government of India had approved the enhancement of age of superannuation from 60 to 65 years. This decision of the Cabinet was applicable to the respondent No. 1. In terms of the said decision at "*iii. that the superannuation age has been enhanced to 65 years in respect of doctors under their administrative control of the respective Ministries/ Departments [M/o of AYUSH (AYUSH Doctors,……*".

e. The Cabinet has not made any distinction or difference in treatment between the AYUSH Doctors working under the administrative control of the Ministry of AYUSH in the matter of enhancement of retirement age up to 65 years. It is reiterated that only two conditions are required to be satisfied to avail the enhanced age of superannuation up to 65 years of age viz., (i) AYUSH Doctor and (ii) being under the Administrative Control of the Ministry. Therefore, the respondent No. 1

is squarely covered by the Cabinet's decision and is entitled to the enhanced age of retirement of 65 years.

f. That accordingly, Rule 56(bb) of the Fundamental Rules, 1922, which is a statutory rule framed under the Proviso to Article 309 of the Constitution of India, was amended *vide* Gazette Notification dated 05th January, 2018 in terms of which the age of superannuation *inter alia* of the AYUSH doctors [3rd line of amended Rule (bb) shall be sixty-five years. This was further amended *vide* the Gazette Notification dated 11.08.2018 categorically laying down that the age of superannuation of doctors belonging to various cadres including AYUSH and working under the Ministry of AYUSH shall be 62 years unless they opt to continue in teaching, consultancy, etc in which case it shall extend up to 65 years. Therefore, even in the 2nd Gazette all the AYUSH doctors working under the Ministry of AYUSH were included without any distinction whether working in the Ministry or in any autonomous body.

g. That contrary to the Cabinet decision, the impugned letter dated 31.10.2017 was issued denying the extension of age up to 65 years to the AYUSH doctors working in autonomous bodies like the respondent No. 1. Para 2 of said letter is not sustainable in law and on facts for the following amongst other reasons:-

i. That the decision was a Cabinet decision and the same could not have been diluted or misinterpreted by the impugned letter of a subordinate functionary *viz*., a Senior Consultant working in the Ministry of AYUSH by excluding the AYUSH Doctors working in the autonomous bodies under the administrative control of the Ministry of AYUSH.

ii. That there is no Cabinet approval to exclude the AYUSH doctors working in autonomous bodies. Therefore, the impugned letter is

contrary to the Cabinet decision and on this count alone the same cannot be enforced against the respondent No. 1.

iii. The letter dated 31.10.2017 in any case stood overruled/superseded in view of the subsequent Gazettes dated 05.01.2018 and 11.08.2018 respectively.

iv. That the sub classification introduced by the impugned letter besides being contrary to the Cabinet decision, is a suspect classification, and it is directly violative of Articles 14, 16 and 21 respectively of the Constitution of India. The reason being first, there is no rationale or nexus with the object which it seeks to achieve i.e, exclusion of the AYUSH Doctors working in autonomous bodies and secondly, it creates an artificial distinction of AYUSH doctors working in the Ministry and elsewhere, although both are similarly qualified and discharge functions of OPD/IPD treatment of patients including surgery etc, albeit at different places. The respondent No. 1 also drew NPA (Non-Practicing Allowance). These facts have not been disputed.

v. That it is well settled in law where the classification has no nexus with the object it seeks to achieve and that there is artificial distinction the same would fall foul of Articles 14 and 21 in the matter of conditions of service of an employee.

vi. That even otherwise, the respondent No. 1 is entitled to the benefit of enhanced age of retirement of 65 years on the strength of plain reading of Clause 34 of the Society Rules extracted @ Pg 12 of the Judgement by the High Court, on which extensive reliance is placed by the appellants contending that the applicability of the extension of age is dependent upon the decision to be taken by the Governing Body of

the autonomous body, and hence the Central Govt rule of age of superannuation is not automatic. This contention is not correct for the following reasons:

- Clause 34 is in two parts. The first part is that the rules governing the retirement of employees of the Government of India as amended from to time shall apply to the employees of the Central Council. The plain and simple reading of this part makes it clear and unambiguous that the rules governing the retirement of Central Government employees as amended from time to time shall apply.

- The second part of Clause 34 “or as desired by the Governing Body” is merely an enabling provision to enable the Governing Body to take a decision regarding retention of an employee beyond the prescribed age of superannuation. In other words, the ‘desire’ of Governing Body is to extend the age of an employee even beyond prescribed age if he continues to be physically fit and efficient and it is in the interest of the Council to retain him in service.

- Therefore, the second part of Clause 34 really gives power to the Governing Body to retain an employee even after the prescribed age of superannuation provided the conditions for grant of such retention is met. This power cannot be negatively read to clothe the Governing Body with power to prescribe less age of superannuation than what is prescribed by the Central Government from time to time.

- While the age of superannuation of an employee of the Central Council shall be at par with the age of superannuation prescribed by the Central Government, the Governing body has the enabling power to retain the employee even beyond the age of superannuation in organisational interest.

- It is submitted that Clause 34 cannot be read negatively to deny the age of increase given by the Cabinet to AYUSH Doctors by wrongly interpreting Clause 34.

vii. That the terms and conditions of service of employees of the Council on all other aspects like Provident Fund/ GPF, Pension, Gratuity, Leave Rules, Scales of Pay, Conduct Rules, and other conditions of service are the same as applicable to Central Government employees as set out in Clauses 31, 32, 33, 42, 44, and 47 respectively of the Rules. Therefore, in the matter of age of superannuation the respondent No. 1 cannot be treated differently.

viii. That the appellants on one hand claim that the AYUSH doctors working in autonomous bodies are not entitled to increase in age of superannuation up to 65 years whereas other AYUSH doctors working in the Ministry of AYUSH and other autonomous institutions have been granted extension of age up to 65 years.

ix. That similarly, AYUSH doctors working in CGHS have been granted increase in age up to 65 years *vide* letter dated 24.11.2017. Therefore, the letter not to grant identical benefit to the respondent No. 1 is not only arbitrary but it is discriminatory and hence it is unsustainable.

h. This Court has dealt with the issue of extension of age of superannuation of similar AYUSH doctors working in the NDMC in ***Dr. Ram Naresh Sharma*** (supra), where in paras 23 and 24 it was held as follows:

> *"**23.** The common contention of the appellants before us is that classification of AYUSH doctors and doctors under CHS in different categories is reasonable and permissible in law. This however does not appeal to us and we are inclined to agree with the findings of the Tribunal and the Delhi High Court that the classification is discriminatory and unreasonable since doctors under both segments are performing the same function of treating and healing their patients. The only difference is that AYUSH doctors are using indigenous systems of medicine like Ayurveda, Unani, etc. and CHS doctors are using Allopathy for tending to their patients. In our understanding, the mode of treatment by itself under the prevalent scheme of things, does not qualify as an intelligible differentia. Therefore, such unreasonable classification and discrimination based on it would surely be inconsistent with Article 14 of the Constitution. The order of AYUSH Ministry dated 24.11.2017 extending the age of superannuation to 65 Years also endorses such a view. This extension is in tune with the notification of Ministry of Health and Family Welfare dated 31.05.2016.*
>
> ***24.** The doctors, both under AYUSH and CHS, render service to patients and on this core aspect, there is nothing to distinguish them. Therefore, no rational justification is seen for having different dates for bestowing the benefit of extended age of superannuation to these two categories of doctors. Hence, the order of AYUSH Ministry (F. No. D. 14019/4/2016-E-I (AYUSH)) dated 24.11.2017 must be retrospectively applied from 31.05.2016 to all concerned respondent-doctors, in the present appeals. All consequences must follow from this conclusion."*

i. The appeal deserves to be dismissed with costs and directions be issued to the appellants to release the consequential benefits including arrears of salary for the period from 01.05 2018 to 30.04.2023 which would cover the entire period of 5 years of increase in age of superannuation. The respondent No. 1 worked from 25.04.2018 following the order of stay grated by the High Court till 05.04.2021 when stay was granted by this Court following which the services of the respondent No. 1 were abruptly ended.

SUBMISSIONS ON BEHALF OF THE INTERVENORS/APPLICANTS IN I.A. NO. 90789 OF 2022 IN SLP (C) NO. 4110 OF 2021

20. It is the case of the intervenors/applicants that their W.P.(C) Nos. 9554 of 2018 and 9584 of 2018 respectively are pending adjudication before the High Court of Delhi and one Original Application No. 272 of 2020 before CAT, Lucknow Bench. They submitted that the final outcome of the present appeal will have a direct impact on the aforesaid litigations. The intervenors claim that they are doctors under another corporation of AYUSH, namely, CCRUM.

21. Submissions canvassed on their behalf are as under:

a. That the Intervenors/applicants are qualified Unani Doctors by qualification and are equivalent to any other qualified Doctors, be it MBBS Doctors or otherwise.

b. The Intervenors/applicants are working under the Direct Administrative Control of Ministry of AYUSH and their service conditions are governed by the Ministry in spite of them performing the duties in CCRUM.

c. The Intervenors/applicants have been receiving the Non-Practicing Allowance while working under CCRUM which clearly indicates that the Intervenors/applicants are indeed qualified doctors at par with the other Doctors who also get the same allowances.

d. The Recruitment Rules which apply to the Intervenors/applicants are: “for functional purpose, a medical officer (Ayurveda) when posted in the Ministry of AYUSH will be designated as Research officer (Ayurveda) and thus the medical officer and Research officer are one and the same and there cannot be any distinction between the two”.

e. That the Government of India (Cabinet) *vide* its order has granted the benefit of enhancement of superannuation age to 65 years to the doctors under the administrative control of the respective Ministries/Department (Ministry of AYUSH) (AYUSH doctors) which is fully applicable to the doctors working under the appellant council but the Ministry of AYUSH erroneously by their mis-interpretation has excluded the benefits to doctors working under autonomous bodies like the council. It is because of the wrong interpretation made by the Ministry of AYUSH, the said benefit was erroneously denied to the AYUSH doctors like the Intervenors/applicants.

f. That the Govt. of India *vide* its own order dated 02.11.2020 has given the said benefit to the Director of ITRA and enhanced the age of superannuation to 65 years. Therefore, as per own interpretation made by the Ministry of AYUSH, the benefit of enhancement of superannuation of age is fully applicable to all doctors (working in any capacity including researcher) who are under the administrative control of AYUSH and when Govt. of India (Cabinet) did not exclude the

autonomous institution like Intervenors/applicants council then the Ministry of AYUSH has no right to differentiate and deny the benefit of superannuation to the Intervenors/applicants.

g. It is submitted that Clauses-34 & 35 of the Bye-Laws issued by the CCRAS, deals with superannuation and prescribes that the Fundamental and Supplementary Rules and General Financial Rules of the Government of India as amended from time to time shall apply *mutatis mutandis* to the employees of the Central Council.

h. It is submitted that the Intervenors/applicants during their entire tenure performed duties like treating patients in OPD and IPD along with research activities which would clearly establish that the Intervenors/applicants have been attending the patients, both, the OPDs and IPDs. The Intervenors/applicants have worked for prestigious hospitals like the RML & DDU while performing duties which include treating the patients along with Research work.

i. It is submitted that Non-Practicing Allowance has been given to the doctors working under Intervenor/applicants council and the said benefit was given to the Intervenor/applicants as well which clearly contradicts the stand of council that the Intervenors/applicants were not performing the duties of doctors. In fact, the Non-Practicing Allowance has been sanctioned only on the basis that the Intervenors/applicants are qualified doctors and are performing the duties of Clinical Doctor which includes the OPD & IPD duties and thus are not allowed to practice outside the scope of their official duties and in lieu were given the Non-Practicing Allowance.

j. It is submitted that those doctors are considered as AYUSH doctors who have completed the degree course either in BAMS, BHMS, BUMS, BNYS & BSM in Ayurveda, Homeopathy, Unami, Siddha, Yoga and Naturopathy and are at par with any other qualified Doctors.

k. The Intervenors/applicants Council is an autonomous body under the Ministry of AYUSH, Government of India and the Council has a Governing Body comprising of the Union Minister-In-Charge of AYUSH as its President and Secretary, Ministry of AYUSH as its Vice President. Its Bye-Laws reveal the pervasive control of the Union Government over the Central Council.

l. The aforesaid is clearly depicted from the Bye-Laws of Intervenor/applicants council. That the Clauses - 34 and 35 of the Bye-Laws deal with the superannuation of the employees of the Council which are quoted herein below: Clauses-34 & 35 of the said Bye-Laws deal with superannuation which read as under:

> *"34. The rules governing the retirement of employees of the Government of India as amended from time to time or as desired by the Governing Body shall apply to the employees of the Central Council. Provided that an employee can be retired in service after prescribed age of superannuation if he continues to be physically fit and efficient and it is in the interest of the Central Council to retain him in service.*
>
> *35. The Fundamental and Supplementary Rules and General Financial Rules of Government of India as amended from time to time shall apply mutatis mutandis to employees of the Central Council."*

m. That, the clarification of Ministry of AYUSH *vide* its letter dated 31.10.2017 is not only misconceived but also uncalled for, arbitrary and discriminatory. The same is also contrary to the object for which the

Central Council is established. The aforesaid clarification would rather frustrate the objectives for which the Central Council was established. The same is against Public Policy and liable to be struck down and the High Court of Orrisa rightly gave decision in favour of the respondent in the instant appeal.

n. That the Intervenor/applicants though were appointed as researcher but along with that they have been performing duties of doctors like treating patient in OPD, IPD etc. and for which requisite certificate was issued to them time to time.

ANALYSIS

22. Having heard the learned counsel appearing for the parties and having gone through materials placed on record the only question that falls for our consideration is whether the High Court committed any error in passing the impugned judgment?

23. The appellant Council is an autonomous body registered under the Society Registration Act, 1860 and is administratively controlled by the Ministry of AYUSH, Government of India. It is a body constituted for the purpose of undertaking, cooperating, formulating, developing and promoting the research on scientific guidelines in Ayurvedic Sciences. The recruitment rules, procedure and the service conditions of these employees are governed by the Bye-Laws and Memorandum of Association of the Council.

24. With a view to appreciate the rival contentions raised by the litigating parties before us, we must look into the Clauses 25(b), 34, 35 and 47 of

the Bye-Laws in the Memorandum of Association of the Central Council for Research in Ayurvedic Sciences:

> *"Appointments*
>
> ***25. (a)**...*
> ***(b)** Recruitments, appointments and promotions to all posts shall be made according to the recruitment rules laid down by the Governing Body or designated competent authority for the posts. Selection shall be made through the Selection Committees/Departmental Promotion Committees duly constituted with the approval of the respective appointing authority.*
>
> *Superannuation*
>
> ***34**. The rules governing the retirement of employees of the Government of India as amended from time to time **or as desired by the Governing Body** shall apply to the employees of the Central Council. Provided that an employee can be retained in service after the prescribed age of superannuation if he continues to be physically fit and efficient and it is in the interest of the Central Council to retain him in service.*
>
> ***35**. The Fundamental and Supplementary Rules and General Financial Rules of Government of India as amended from time to time shall apply mutatis mutandis to employees of the Central Council.*
>
> *Other Conditions of Service*
>
> ***47**. In respect of matters not provided for in these regulations the rules as applicable to Central Government servants regarding the general conditions of service, pay, allowances T.A. and daily allowances, foreign service terms, deputation in India and abroad, etc. and orders and decisions issued in this regard by the Central Government from time to time shall apply mutatis mutandis to the employees of the Central Council."*
>
> (Emphasis Supplied)

25. A plain reading of the aforesaid clauses of the Bye-Laws would indicate that the employees are recruited through a selection committee of the Council. It further indicates that the Fundamental Rules, 1922 will have no direct application in cases where the governing body finalises the rules of superannuation. In terms of Clause 34 of the Bye-Laws, the governing body had decided the age of superannuation to be 60 years on 01.12.1998. The said decision was ratified on 27.01.2000, in the 14th meeting of the governing body of the Council.

26. In our view, the learned Senior Counsel appearing for the appellants is right in his submission that the decision of the governing body dated 27.12.2000 applied on 30.04.2018 i.e., the date of superannuation of the respondent No. 1. It is not in dispute that the respondent No. 1 was working as a researcher and the service conditions of a Research Assistant are altogether different compared to the AYUSH Doctor. It is also not in dispute that the method of recruitment of the respondent No. 1 is different compared to that with the AYUSH doctors.

27. The principal argument canvassed by the learned Senior Counsel appearing on behalf of the respondent No. 1 is that the provisions of FR 56(bb) would apply to the respondent No. 1 in his capacity as an employee of the Council in view of Clause 35 of the Bye-Laws of the Council referred to above, by which the provisions of the FR and SR would apply to the employees of the Council *mutatis mutandis*. On the other hand, the case put up by the appellants is that the said provisions are not applicable to the employees of the Council in view of the clarification of the Ministry dated 31.10.2017. In regard to the clarification of the Ministry *vide* its letter dated 31.10.2017, the stance of

the respondent No. 1 is that such clarification cannot override the decision of the Cabinet or the provisions of the FR 56 as amended.

28. The aforesaid aspect was duly considered by the CAT. The CAT rightly took the view that the argument canvassed on behalf of the respondent No. 1, that the Council failed to consider the Clause 35 of the Bye-Laws referred to above, which states that the FR, SR and (GFR) as amended from time to time shall apply *mutatis mutandis* to employees of the Council, was without any merit and deserved to be rejected. The CAT in our opinion rightly rejected such argument. We say so because the applicability would be subject to the provision specific to the Clause 34 governing superannuation of the employees of the Council.

29. There is nothing in Clause 35 of the Bye-Laws referred to above on the basis of which, it could be said that the same will have an overriding effect on Clause 34 as regards the age of retirement. Clause 47 of the Bye-Laws makes it abundantly clear that for the matters not specifically provided in the Bye-Laws, the rules applicable to the government employees would apply. However, as there is a specific provision regarding superannuation in Clause 34, the rules governing the government services in respect of superannuation are not applicable to the employees of the Council unless it is in accordance with Clause 34 of the Bye-Laws.

30. We shall now deal with one another submission canvassed by Mr. R. Balasubramanian, the learned Senior Counsel appearing on behalf of the respondent No. 1. It was submitted that Clause 34 of the Bye-Laws should be read in two parts. The first part states that the Rules governing the retirement of employees of the Government of India as amended

from time to time would apply to the employees of the Central Council. According to the learned Senior Counsel, the second part of the Clause 34 which reads “or as desired by the governing body” is merely an enabling provision empowering the governing body to take a decision whether an employee deserves to be retained beyond the prescribed age of superannuation. According to the learned Senior Counsel such power should not be read in a negative form to clothe the governing body with the power to prescribe lesser age of superannuation than what has been prescribed by the Central Government from time to time. We are afraid, we are not in a position to accept such an argument. The language of Clause 34 is very clear. What is important to note while reading the Clause 34 is the word “or”. Thereafter, there is a proviso which says that an employee can be retained in service after prescribed age of superannuation if he continues to be physically fit and efficient and it is in the interest of the Central Counsel to retain him in the service.

31. The expression “the rules governing the retirement of employees of Government of India as amended from time to time” is separated from the rest of the part of the Bye-Law by the word “or” which is disjunctive and giving natural meaning to the said word separates the rules that may be framed by the Government of India and the rules that the Council may desire to frame as regards the age of retirement of the employees of the Council.

32. It is a well-established principle of statutory interpretation that the word “or” is normally disjunctive and the word “and” is normally conjunctive. Both of them can be read as vice-versa, but that interpretation is adopted only where the intention of the legislature is manifest.

33. Justice G.P. Singh in the *Principles of Statutory Interpretation* (Thirteenth Edition 2012) page 485 has stated as follows:

> *"The word 'or' is normally disjunctive and 'and' is normally conjunctive but at time they are read as vice versa to give effect to the manifest intention of the Legislature as disclosed from the context. As stated by SCRUTTON, L.J.: "You do sometimes read "or" as 'and' and in a statute. But you do not do it unless you are obliged because 'or' does not generally mean 'and' and 'and' does not generally mean 'or'. And as pointed out by LORD HALSBURY the reading of 'or' as 'and' is not to be resorted to, "unless some other part of the same statute or the clear intention of it requires that to be done". Where provision is clear and unambiguous the word 'or' cannot be read as 'and' by applying the principle of reading down. But if the literal reading of the words produces an unintelligible or absurd, result 'and' may be read for 'or' and 'or' for 'and' even though the result of so modifying the words is less favourable to the subject provided that the intention of the Legislature is otherwise quite clear. Conversely if reading of 'and' and 'or' produces grammatical distortion and makes no sense of the portion following 'and', 'or' cannot be read in place of 'and'. The alternatives joined by 'or' need not always be mutually exclusive."*

34. Thus, in view of the aforesaid discussion, we reject the submission canvassed on behalf of the respondent No. 1 as regards the interpretation of the Clause 34 of the Bye-Laws. In this context, we may only say that the governing body of the Council is not obliged to take a decision in tune with the decision of the Ministry of AYUSH regarding superannuation more particularly having made it clear that enhancement of retirement age is not applicable to an autonomous body like CCRAS.

35. We are also not impressed by the submission canvassed on behalf of the respondent No. 1 that as the terms and conditions of the services of the

employees of the Council on all other aspects like the Provident Fund/GPF, Pension, Gratuity, Leave Rules, Scales of Pay, Conduct Rules and other conditions of services are the same as applicable to the employees of the Central Government as set out in Clauses 31, 32, 33, 42, 44 and 47 respectively of the Bye-Laws, the matter of age of superannuation of the respondent No. 1 should not be treated differently. What should be the age of superannuation is a matter of policy. It is not within the domain of the court to legislate. It is only if a policy decision or a notification is arbitrary it may invite the frowns of Article 14 of the Constitution. In any case, the question of age of retirement stands on a different footing from the service conditions relating to pay and allowances and revision of pay.

36. We may at this stage, refer to the following decision in ***Tamil Nadu Education Department Ministerial and General Subordinate Services Association and Others v. State of Tamil Nadu and Others*** reported in (1980) 3 SCC 97 : [SCC pp. 99 SCC (L&S) p. 296, para 7]

> *"**7.** In Service Jurisprudence integration is a complicated administrative problem where, in doing broad justice to many, some bruise to a few cannot be ruled out. Some play in the joints, even some wobbling, must be left to government without fussy forensic monitoring, since the administration has been entrusted by the Constitution to the executive, not to the court. All life, including administrative life, involves experiment, trial and error, but within the leading strings of fundamental rights, and, absent unconstitutional 'excesses', judicial correction is not right. ….."*

37. It is too late in the day for the respondent No. 1 to raise all such issues including infringement of Article 14 of the Constitution on the ground of artificial distinction between the Research Assistant and AYUSH Doctors. The respondent No. 1 knew from day one i.e., from the date of

his appointment that he was being appointed as a Research Assistant. His service conditions and mode of recruitment are different compared to the AYUSH Doctors. It is a different thing that he might have treated the patients but that by itself would not entitle him to claim that his age of superannuation should be at par with the AYUSH Doctors.

38. In the aforesaid context, we may refer to and rely upon a decision of this Court in the case of ***State of Bihar and Another v. Teachers' Association of Govt. Engineering College and Others***, reported in (2000) 10 SCC 527 wherein, the respondents were teachers of three engineering colleges owned by the State of Bihar. They were recruited through the Bihar Public Service Commission. Their service conditions were governed by the Bihar Service Code. Under the relevant provisions of the Bihar Service Code, the age of superannuation up to 1989, was 58 years. However, with effect from 01.10.1989 it was raised to 60 years. They claimed that their age of retirement should be the same as the age of retirement of Bihar Engineering College which was a college of the Patna University. Its teachers were recruited through the University Service Commission. Their service conditions were governed under the Patna University Act. At the relevant time, the age of retirement for university teachers was 62 years. However, with effect from 15.08.1992 the age of retirement was reduced to 60 years. The respondent's claim was upheld by the High Court. Allowing the State's appeal, this Court held:

> ***"5.*** *The respondents contend that their age of retirement should be the same as the age of retirement of university teachers employed in Bihar Engineering College, Patna. But the terms and conditions of service of teachers in the three engineering colleges of the State are different from the terms and conditions of service of the university teachers employed*

*in Bihar Engineering College at Patna. The authority responsible for recruitment is also different. The method of recruitment is different and service conditions are prescribed under different rules and regulations and/or under a separate Act. We fail to see how in respect of the teachers who are government servants, governed by the Bihar Service Code, the age of superannuation should be different from the age of superannuation for all other government servants governed by the Bihar Service Code. The High Court ought not to have equated the service conditions in the three State colleges with the service conditions in a University college. Application of Article 14, in these circumstances, is misconceived, when there are valid criteria for differentiating between the service conditions in the two sets of colleges. In the premises the impugned judgment of the High Court insofar as it directs that the age of superannuation of teachers working in the three engineering colleges other than Bihar College of Engineering, Patna should be brought on par with the age of superannuation of those working in Bihar College of Engineering at Patna, is set aside. The further direction to pay arrears or give benefits flowing from the extended age of superannuation is also set aside. The appeals are allowed accordingly.***"***

39. The only idea with which we have referred to and relied upon the aforesaid decision is to convey that the case on hand is not one of discrimination. Article 14 of the Constitution has no application having regard to the facts of the present case.

40. Mr. Lekhi, the learned Senior Council appearing for the appellants placed strong reliance on two decisions of this Court: (i) ***T.M. Sampath*** (supra) and (ii) ***Bhagwan*** (supra). Both these decisions have been relied upon to fortify the contention that the employees of autonomous bodies are governed by their own rules and Bye-Laws and they cannot claim parity with the government employees. We must look into both these

decisions. Paras 3, 15, 16 and 17 respectively of ***T.M. Sampath*** (supra) are as follows:

> *"**3.** The facts of these appeals are briefly stated hereinafter. The appellants herein are the employees of National Water Development Agency ("NWDA") which was established as a society in July 1982 and was registered under the Societies Registration Act, 1860. The Society NWDA, which falls under the aegis and control, both administrative and financial, of the Ministry of Water Resources, is fully funded by the Government of India, headed by the Union Minister for Water Resources as the President. NWDA framed rules and regulations for its smooth functioning. Whatever emoluments have been prescribed for the government servants by the Central Government Office Memorandum ("the OM", for short) the same apply mutatis mutandis to the employees of NWDA.* ***Bye-law 28 of NWDA also mandates that the rules and orders applicable to the Central Government employees shall apply mutatis mutandis to the employees of NWDA subject to modification by the Governing Body concerning service conditions and only in case of any doubt, the matter has to be referred to the Governing Body for a decision.*** *Bye-law 26(a) provides for the emoluments structure for all employees that will be adopted by NWDA, with the approval of the Ministry of Finance (Department of Expenditure).* ***Bye-law 28 provides that till such time NWDA frames its rules governing service conditions of the employees, rules and orders applicable to the Central Government employees shall apply mutatis mutandis, subject to such modifications as made by NWDA from time to time.***
>
> *xxx* *xxx* *xxx*
>
> ***15.*** *In light of the facts and circumstances of this case and the submissions made by the learned counsel on both sides, it can be concluded that NWDA had framed its regulation: the CPF Rules, 1982 and they were duly approved by the Governing Body of NWDA. As NWDA is an autonomous body under the Ministry of Water Resources, it has framed its own bye-laws governing the employees.* ***It has been time and again reiterated that the court must adopt an attitude of total non-interference or minimal interference in the matter of***

interpretation of rules framed by autonomous institutions. *In Kerala SRTC v. K.O. Varghese [(2007) 8 SCC 231 : (2007) 2 SCC (L&S) 862] , this Court held : (SCC pp. 240-41, paras 18 & 21)*

> *"18. … KSRTC is an autonomous corporation established under the Road Transport Corporations Act, 1950. It can regulate the services of its employees by making appropriate regulations in that behalf.*
>
> * * *
>
> *21. The High Court … is not correct in thinking that there is any compulsion on KSRTC on the mere adoption of Part III of KSR to automatically give all enhancements in pension and other benefits given by the State Government to its employees."*

Thus, as the appellants are governed by the CPF Rules, 1982, the OM applicable to the Central Government employees is not applicable to them."

16. *On the issue of parity between the employees of NWDA and Central Government employees, even if it is assumed that the 1982 Rules did not exist or were not applicable on the date of the OM i.e. 1-5-1987, the relevant date of parity,* ***the principle of parity cannot be applicable to the employees of NWDA. NWDA cannot be treated as an instrumentality of the State under Article 12 of the Constitution merely on the basis that its funds are granted by the Central Government.*** *In Zee Telefilms Ltd. v. Union of India [(2005) 4 SCC 649], it was held by this Court that the autonomous bodies having some nexus with the Government by itself would not bring them within the sweep of the expression "State" and each case must be determined on its own merits. Thus, the plea of the employees of NWDA to be treated on a par with their counterparts in the Central Government under sub-rule (6)(iv) of Rule 209 of the General Financial Rules, merely on the basis of funding is not applicable.*

17. *Even if it is presumed that NWDA is "State" under Article 12 of the Constitution, the appellants have failed to prove that they are on a par with their counterparts, with whom they claim parity. As held by this Court in UT, Chandigarh v. Krishan Bhandari [(1996) 11 SCC 348 : 1997 SCC (L&S) 391],* ***the claim to equality can be***

claimed when there is discrimination by the State between two persons who are similarly situated. The said discrimination cannot be invoked in cases where discrimination sought to be shown is between acts of two different authorities functioning as State under Article 12*. Thus, the employees of NWDA cannot be said to be "Central Government employees" as stated in the OM for its applicability."*

(Emphasis supplied)

41. The decision in the case of ***T.M. Sampath*** (supra) was later referred to and relied upon by this Court in the case of ***Bhagwan*** (supra). This Court in the ***Bhagwan*** (supra) observed in para 26 as under:

> *"**26.** As per the law laid down by this Court in a catena of decisions, the employees of the autonomous bodies cannot claim, as a matter of right, the same service benefits on a par with the government employees. Merely because such autonomous bodies might have adopted the Government Service Rules and/or in the Governing Council there may be a representative of the Government and/or merely because such institution is funded by the State/Central Government, employees of such autonomous bodies cannot, as a matter of right, claim parity with the State/Central Government employees. This is more particularly, when the employees of such autonomous bodies are governed by their own Service Rules and service conditions. The State Government and the autonomous Board/body cannot be put on a par."*
>
> (Emphasis Supplied)

42. We must also look into the decision of this Court in the case of ***Kerala Assistant Public Prosecutors Associations v. State of Kerala and Others*** reported in AIR 2018 SC 2652, wherein the Assistant Public Prosecutors were seeking parity with respect to the age of superannuation to that of Public Prosecutors. This Court took notice of the fact that the method of selection between the two posts is very different and that the former are considered to be government

employees, whereas the latter are not. The Court thereafter, proceeded to hold that merely because the nature of work between the two is similar, the same does not imply that the age of superannuation ought to be similar as well. The relevant portion is produced hereunder:

> *"**6.** … The fact that the nature of duties and functions of Assistant Public Prosecutors and Public Prosecutors are similar, per se, cannot be the basis to claim parity with Public Prosecutors in respect of age of superannuation."*
>
> (Emphasis supplied)

43. In ***Union of India and Others v. Lieut (Mrs) E. Iacats***, reported in (1997) 7 SCC 334, the respondent therein had filed a writ petition in the Guahati High Court challenging her retirement at the age of 55 years on the ground that in other nursing services under the military establishment the age of retirement was 58 years. It was argued before the High Court that it was discriminatory to retire the nurses who were appointed for local service only at the age of 55 years. The Petition was allowed by the High Court. The UOI came before this Court in appeal. This Court while allowing the appeal filed by the UOI, observed as under:

> *" 3. … If different nursing services are constituted under separate army instructions carrying their own separate terms and conditions of service, one cannot complain of discrimination if the ages of retirement prescribed under these different services are different. **Each will be governed by its own rules and regulations.** The respondent is, therefore, not justified in claiming that she has been discriminated against because she has retired at the age of 55."*
>
> (Emphasis supplied)

44. The age of superannuation is always governed by the statutory rules governing appointment on a particular post. Hence, even if it is averred

that the nature of work involved in the two posts is similar, the same cannot be a ground to increase or alter the service conditions of an employee as each post is governed by its own set of rules. The same was held in the case of ***New Okhla Industrial Development Authority and Another v. B D Singhal and Others***, reported in **AIR 2021 SC 3457**, wherein this Court held as under:

> "***24.*** … *Since the enhancement of the age of superannuation is a 'public function' channelised by the provisions of the statute and the service regulations, the doctrine of promissory estoppel cannot be used to challenge the action of NOIDA.*"
>
> (Emphasis supplied)

45. We shall now look into the decision of this Court in ***Dr. Ram Naresh Sharma*** (supra). This decision of this Court has been relied upon by Mr. R. Bala, the learned Senior Counsel appearing for the respondent No. 1. He has relied upon paras 23 and 24 respectively which read thus:

> *"**23.** The common contention of the appellants before us is that classification of AYUSH doctors and doctors under CHS in different categories is reasonable and permissible in law. This however does not appeal to us and we are inclined to agree with the findings of the Tribunal and the Delhi High Court that the classification is discriminatory and unreasonable since doctors under both segments are performing the same function of treating and healing their patients. The only difference is that AYUSH doctors are using indigenous systems of medicine like Ayurveda, Unani, etc. and CHS doctors are using Allopathy for tending to their patients. In our understanding, the mode of treatment by itself under the prevalent scheme of things, does not qualify as an intelligible differentia. Therefore, such unreasonable classification and discrimination based on it would surely be inconsistent with Article 14 of the Constitution. The order of AYUSH Ministry dated 24.11.2017 extending the age of superannuation to 65 Years also endorses such a view. This extension is in tune with the notification of Ministry of Health and Family Welfare dated 31.05.2016.*

> ***24.*** *The doctors, both under AYUSH and CHS, render service to patients and on this core aspect, there is nothing to distinguish them. Therefore, no rational justification is seen for having different dates for bestowing the benefit of extended age of superannuation to these two categories of doctors. Hence, the order of AYUSH Ministry (F. No. D. 14019/4/2016EI (AYUSH)) dated 24.11.2017 must be retrospectively applied from 31.05.2016 to all concerned respondent doctors, in the present appeals. All consequences must follow from this conclusion."*

46. The aforesaid decision of this Court in the case of ***Dr. Ram Naresh Sharma*** (supra) upon which strong reliance has been placed on behalf of the respondent No. 1 is of no avail for the simple reason that in the said case, the only question that arose was whether the benefit of enhancement of age of retirement from 60 years to 65 years granted in favour of allopathy doctors was available even for ayurveda doctors or not? The said decision was based upon an order of the Ministry of AYUSH dated 24.11.2017.

47. As seen from paragraph 23 of the said decision referred to above, the age of retirement of allopathy doctors was enhanced by an order dated 31.05.2016 issued by the Ministry of Health and Family Welfare. This was followed by consequential amendment of the Fundamental Rules and Supplementary Rules, 1922. Since, Ayurveda doctors were not covered by the Ministry's order dated 31.05.2016, the Ayurveda doctors filed applications before the Administrative Tribunal. The Administrative Tribunal allowed the applications by an order dated 24.08.2017. The North Delhi Municipal Corporation (Employer) filed writ petitions before the High Court of Delhi challenging the decision of the Tribunal. During the pendency of the writ petitions, the Ministry of AYUSH issued an order dated 24.11.2017 enhancing the age of retirement of AYUSH

doctors also to 65 years, but w.e.f**.** 27.09.2017**.** It is in that context that this Court held as aforesaid in ***Dr. Ram Naresh Sharma*** (supra). Thus, this decision is in no manner helpful to the respondent No. 1.

48. We may only say that the entire approach of the High Court towards the present litigation was incorrect. We are a bit disappointed to observe that the High Court dealt with the present litigation in a very casual manner. First, the High Court went to the extent of granting interim relief extending the period of service beyond 60 years till the disposal of the Original Petition by the CAT. By virtue of such interim order which the High Court ordinarily should not grant, the respondent No. 1 although was to retire in 2018 yet continued in service till 2021. It is only when this Court stayed the operation of the impugned order passed by the High Court while issuing notice that the service of the respondent No. 1 came to an end. The Court or the Tribunal should, therefore, be slow and circumspect in granting interim relief for continuation in service, unless *prima facie* evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated. But if he fails, he would have enjoyed undeserved benefit of extended service and merely caused injustice to his immediate junior. At the cost of repetition, we may state that the High Court was conscious of the fact as very much recorded in the impugned order that the respondent No. 1 was appointed as a Research Assistant and was functioning as a Researcher under the Research Council and his service conditions were also different compared to the AYUSH doctors serving with the Ministry of AYUSH. The High Court misdirected itself saying that the benefit of enhanced age of superannuation can also be granted if the duties performed are the same like AYUSH doctors. We fail to understand how can the Court fix the age of superannuation of an employee saying that he is very much

devoted towards his job. The age of superannuation is always governed by statutory rules & other service conditions.

49. Before we close this matter, we would like to observe something important in the aforesaid context:

Two cardinal principles of law governing exercise of extraordinary jurisdiction under Article 226 of the Constitution more particularly when it comes to issue of writ of certiorari.

50. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.

51. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although

founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not.

52. The essential features of a writ of certiorari, including a brief history, have been very exhaustively explained by B.K. Mukherjea, J. in ***T.C. Basappa v. T. Nagappa and Another***, reported in AIR 1954 SC 440. The Court held that a writ in the nature of certiorari could be issued in 'all appropriate cases and in appropriate manner' so long as the broad and fundamental principles were kept in mind. Those principles were delineated as follows:

> *"**7.** … In granting a writ of 'certiorari', the superior court does not exercise the powers of an appellate tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous, but does not substitute its own views for those of the inferior tribunal …..*
>
> ***8.** The supervision of the superior court exercised through writs of certiorari goes on two points, as has been expressed by Lord Summer in King v. Nat Bell Liquors Limited [(1922) 2 AC 128, 156]. One is the area of inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of law in the course of its exercise. ….*

> ***9.*** *Certiorari may lie and is generally granted when a court has acted without or in excess of its jurisdiction."*

53. Relying on ***T.C. Basappa*** (supra), the Constitution Bench of this Court in the case of ***Hari Vishnu Kamath*** (supra), laid down the following propositions as well established:

> *"(1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior court or tribunal acts without jurisdiction or in excess of it, or fails to exercise it.*
>
> *(2) Certiorari will also be issued when the court or tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice.*
>
> *(3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous."*

54. This Court explained that a court which has jurisdiction over a subject matter has jurisdiction to decide wrong as well as right, and when the Legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy if a superior court were to rehear the case on the evidence and substitute its own finding in certiorari.

55. In ***Syed Yakoob v. K.S. Radhakrishnan and Others***, reported in AIR 1964 SC 477, P.B. Gajendragadkar, CJ., speaking for the Constitution Bench, placed the matter beyond any position of doubt by holding that a writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals. The observations of this Court in para 7 are worth taking note of:

*"**7.** The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised….."*

56. In ***Surya Dev Rai v. Ram Chandra Rai and Others***, reported in 2003 (6) SCC 675, a Bench of two Judges held that the certiorari jurisdiction though available, should not be exercised as a matter of course. The High Court would be justified in refusing the writ of certiorari if no failure of justice had been occasioned. In exercising the certiorari jurisdiction, the procedure ordinarily followed by the High Court is to command the inferior court or tribunal to certify its record or proceedings to the High Court for its inspection so as to enable the High Court to determine, whether on the face of the record the inferior court has committed any of the errors as explained by this Court in ***Hari Vishnu Kamath v. Ahmad Ishaque and Others,*** AIR 1955 SC 233 occasioning failure of justice.

57. From the aforesaid, it could be said in terms of a jurisdictional error that want of jurisdiction may arise from the nature of the subject matter so that the inferior court or tribunal might not have the authority to enter on the inquiry. It may also arise from the absence of some essential preliminary or jurisdictional fact. Where the jurisdiction of a body depends upon a preliminary finding of fact in a proceeding for a writ of certiorari, the court may determine, whether or not that finding of fact is correct. The reason is that by wrongly deciding such a fact, the court or tribunal cannot give itself jurisdiction.

58. In ***Anisminic Ltd. v. Foreign Compensation Commission and Another***, reported in (1969) 2 AC 147, the House of Lords has given a very broad connotation to the concept of ‘jurisdictional error’. It has been laid down that a tribunal exceeds jurisdiction not only at the threshold when it enters into an inquiry which it is not entitled to undertake, but it may

enter into an enquiry within its jurisdiction in the first instance and then do something which would deprive it of its jurisdiction and render its decision a nullity. In the words of Lord Reid:

> *"But there are many cases where, although the tribunal had jurisdiction to enter on the enquiry, it has done or failed to do something in the course of the enquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the enquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive."*

59. So far as the errors of law are concerned, a writ of certiorari could be issued if an error of law is apparent on the face of the record. To attract the writ of certiorari, a mere error of law is not sufficient. It must be one which is manifest or patent on the face of the record. Mere formal or technical errors, even of law, are not sufficient, so as to attract a writ of certiorari. As reminded by this Court time and again, this concept is indefinite and cannot be defined precisely or exhaustively and so it has to be determined judiciously on the facts of each case. The concept, according to this Court in ***K.M. Shanmugam v. The S.R.V.S. (P) Ltd. and Others,*** reported in AIR 1963 SC 1626, 'is comprised of many imponderables… it is not capable of precise definition, as no objective criterion could be laid down, the apparent nature of the error, to a large extent, being dependent upon the subjective element.' A general test to apply, however, is that no error could be said to be apparent on the face

of the record if it is not 'self-evident' or 'manifest'. If it requires an examination or argument to establish it, if it has to be established by a long drawn out process of reasoning, or lengthy or complicated arguments, on points where there may considerably be two opinions, then such an error would cease to be an error of law. (See : ***Satyanarayan Laxminarayan Hegde and Others v. Mallikarjun Bhavanappa Tirumale***, reported in AIR 1960 SC 137.)

60. However, in our opinion, such a test should not be applied in a straitjacket formula and may fail because what might be considered by one Judge as an error self-evident, might not be considered so by another Judge.

61. At this stage, it may not be out of place to remind ourselves of the observations of this Court in ***Syed Yakoob*** (supra) on this point, which are as follows:

> *"Where it is manifest or clear that the conclusion of law recorded by an inferior court or tribunal is based on an obvious misinterpretation of the relevant statutory provision, or something in ignorance of it, or may be even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. Certiorari would also not lie to correct mere errors of fact even though such errors may be apparent on the face of the record. The writ jurisdiction is supervisory and the court exercising it is not to act as an appellate court. It is well settled that the writ court would not re-appreciate the evidence and substitute its own conclusion of fact for that recorded by the adjudicating body, be it a court or a tribunal. A finding of fact, howsoever erroneous, recorded by a court or a tribunal cannot be challenged in proceedings for certiorari on the ground that the relevant and material evidence adduced before*

the court or the tribunal was insufficient or inadequate to sustain the impugned finding.

It is also well settled that adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal and these points cannot be agitated before the writ court."

62. In the aforesaid context, it will be profitable for us to refer to the decision of this Court in the case of ***Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union and Another***, reported in AIR 2000 SC 1508. This Court observed as under:

"… The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ Court to warrant those findings at any rate, as long as they are based upon such materials which are relevant for the purpose or even on the ground that there is yet another view which can be reasonably and possibly undertaken. …"

63. However, we may clarify that findings of fact based on 'no evidence' or purely on surmises and conjectures or which are perverse points could be challenged by way of a certiorari as such findings could be regarded as an error of law.

64. Thus, from the various decisions referred to above, we have no hesitation in reaching to the conclusion that a writ of certiorari is a high prerogative writ and should not be issued on mere asking. For the issue of a writ of certiorari, the party concerned has to make out a definite case for the same and is not a matter of course. To put it pithily, certiorari shall issue

to correct errors of jurisdiction, that is to say, absence, excess or failure to exercise and also when in the exercise of undoubted jurisdiction, there has been illegality. It shall also issue to correct an error in the decision or determination itself, if it is an error manifest on the face of the proceedings. By its exercise, only a patent error can be corrected but not also a wrong decision. It should be well remembered at the cost of repetition that certiorari is not appellate but only supervisory.

65. A writ of certiorari, being a high prerogative writ, is issued by a superior court in respect of the exercise of judicial or quasi-judicial functions by another authority when the contention is that the exercising authority had no jurisdiction or exceeded the jurisdiction. It cannot be denied that the tribunals or the authorities concerned in this batch of appeals had the jurisdiction to deal with the matter. However, the argument would be that the tribunals had acted arbitrarily and illegally and that they had failed to give proper findings on the facts and circumstances of the case. We may only say that while adjudicating a writ-application for a writ of certiorari, the court is not sitting as a court of appeal against the order of the tribunals to test the legality thereof with a view to reach a different conclusion. If there is any evidence, the court will not examine whether the right conclusion is drawn from it or not. It is a well-established principle of law that a writ of certiorari will not lie where the order or decision of a tribunal or authority is wrong in matter of facts or on merits. (See: ***King v. Nat Bell Liquors Ltd.,*** (1922) 2 AC 128 (PC))

66. We may quote with profit a decision of this Court in the case of ***Satyanarayan Laxminarayan Hegde*** (supra) to understand the true purport and meaning of an error apparent on the face of the record or an error which could be termed as self-evident. The facts of that case were as below:

67. The respondent made an application in the Revenue Court of the Mamlatdar of Sirsi praying for the delivery of possession of property which the appellant was on that date possessing as the tenant under him on the basis of a ‘Mulegeni’ deed executed by the respondent's predecessor-in-interest in favour of the appellant's predecessor-in-interest. The case was governed by the Bombay Tenancy and Agricultural Lands Act, 1948, and one of the questions in controversy was whether before applying for the delivery of possession, it was incumbent upon the respondent to have given a notice terminating the tenancy. The Mamlatdar made an order for possession in favour of the respondent. The Collector allowed the appeal and set aside the order of the Mamlatdar. The Bombay Revenue Tribunal, to whom the matter was taken up on appeal, held that as the respondent had failed to terminate the tenancy by notice before instituting the action for ejectment, he was not entitled to entertain the application for recovery of possession.

68. Thereafter, the respondent made an application to the High Court of Bombay under Article 227 of the Constitution of India for the quashing of the order of the Revenue Tribunal and the Collector and for the restoration of the order of the Mamlatdar. The High Court was of the opinion that the Tribunal had committed an error which was apparent on the face of the record in holding that an order of possession could not be made unless a notice terminating the tenancy had been given before the institution of the proceeding and it issued a writ of certiorari quashing the order of the Tribunal and restoring that of the Mamlatdar.

69. An appeal was filed against the order of the High Court and this Court reversed that order on the ground that the alleged error in the judgment of the Bombay Revenue Tribunal, namely that an order for possession

should not be made unless a previous notice required by Section 14 of the Bombay Tenancy and Agricultural Lands Act, 1948, had been given, was not an error apparent on the face of the record so as to be capable of being corrected by a writ of certiorari and the following observations were made by this Court:

> *"**17**….. An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. As the above discussion of the rival contentions show the alleged error in the present case is far from self-evident and if it can be established, it has to be established by lengthy and complicated arguments. We do not think such an error can be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ. ...."*

70. We may also quote with profit one more decision of this Court explaining the true scope of issue of a writ of certiorari and what is an error apparent on the face of the record, which could be corrected by issue of a high prerogative writ like certiorari. In the case of ***Ebrahim Aboobakar and Hawabai Aboobakar v. The Custodian General of Evacuee Property, New Delhi***, reported in (1952) 1 SCC 798, this Court made the observations in paras 12, 13, 14 and 15, which we quote below:

> *"**12.** The remaining three questions canvassed before us, unless they are of such a nature as would make the decision of the respondent dated 13-5-1950, a nullity, cannot be the subject-matter of a writ of certiorari. It is plain that such a writ cannot be granted to quash the decision of an inferior court within its jurisdiction on the ground that the decision is wrong. Indeed, it must be shown before such a writ is issued that the authority which passed the order acted without jurisdiction or in excess of it or in violation of the principles of*

natural justice. Want of jurisdiction may arise from the nature of the subject-matter, so that the inferior court might not have authority to enter on the inquiry or upon some part of it. It may also arise from the absence of some essential preliminary or upon the existence of some particular facts collateral to the actual matter which the court has to try and which are conditions precedent to the assumption of jurisdiction by it. But once it is held that the court has jurisdiction but while exercising it, it made a mistake, the wronged party can only take the course prescribed by law for setting matters right inasmuch as a court has jurisdiction to decide rightly as well as wrongly. The three questions agitated before us do not seem to be questions which bear upon the jurisdiction of the court of appeal, or its authority to entertain them.

13. *It was contended that no court of limited jurisdiction can give itself jurisdiction by a wrong decision on a point collateral to the merits of the case upon which the limit of its jurisdiction depends and that the questions involved in the appeal before the respondent were collateral to the merits of the case. As pointed out by Lord Esher, M.R., in R. v. CIT [R. v. CIT, (1888) LR 21 QBD 313 (CA)] , the formula enunciated above is quite plain but its application is often misleading. The learned Master of the Rolls classified the cases under two categories thus : (QBD pp. 319-20)*

> *"… When an inferior court or tribunal or body, which has to exercise the power of deciding facts, is first established by Act of Parliament, the legislature has to consider what powers it will give that tribunal or body. It may in effect say that, if a certain state of facts exists and is shown to such tribunal or body before it proceeds to do certain things, it shall have jurisdiction to do such things, but not otherwise. There it is not for them conclusively to decide whether that state of facts exists, and, if they exercise the jurisdiction without its existence, what they do may be questioned, and it will be held that they have acted without jurisdiction. But there is another state of things which may exist. The legislature may entrust the tribunal or body with a jurisdiction which includes the jurisdiction to determine whether the preliminary state of facts exists as well as the jurisdiction, [and] on finding that it does exist, to proceed further or do something more. When the legislature are*

establishing such a tribunal or body with limited jurisdiction, they also have to consider, whatever jurisdiction they give them, whether there shall be any appeal from their decision, for otherwise there will be none. In the second of the two cases, I have mentioned it is erroneous application of the formula to say that the tribunal cannot give themselves jurisdiction by wrongly deciding certain facts to exist, because the legislature gave them jurisdiction to determine all the facts including the existence of the preliminary facts on which the further exercise of their jurisdiction depends; and if they were given jurisdiction so to decide, without any appeal being given, there is no appeal from such exercise of their jurisdiction."

14. *The tribunal constituted to hear appeals under Section 24 has been constituted in these terms:*

"Any person aggrieved by an order made under Section 7, Section 16, Section 19 or Section 38 may prefer an appeal in such manner and within such time as may be prescribed —

(a) to the Custodian, where the original order has been passed by a Deputy or Assistant Custodian;

(b) to the Custodian General, where the original order has been passed by the Custodian, an Additional Custodian or an authorised Deputy Custodian."

15. *Like all courts of appeal exercising general jurisdiction in civil cases, the respondent has been constituted an appellate court in words of the widest amplitude and the legislature has not limited his jurisdiction by providing that such exercise will depend on the existence of any particular state of facts. Ordinarily, a court of appeal has not only jurisdiction to determine the soundness of the decision of the inferior court as a court of error, but by the very nature of things it has also jurisdiction to determine any points raised before it in the nature of preliminary issues by the parties. Such jurisdiction is inherent in its very constitution as a court of appeal. Whether an appeal is competent, whether a party has locus standi to prefer it, whether the appeal in substance is from one or another order and whether it has been preferred in proper form and within the time prescribed, are all matters for the decision of the appellate court so constituted. Such a tribunal*

falls within Class 2 of the classification of the Master of the Rolls [R. v. CIT, (1888) LR 21 QBD 313 (CA)] . In these circumstances, it seems to us that the order of the High Court of Punjab that a writ of certiorari could not be issued to the respondent quashing the order of 13-5-1950, was right. We are further of the opinion that none of the contentions raised has any merit whatsoever."

71. This Court in ***Parry and Company Limited v. Commercial Employees' Association, Madras and Another*** (1952) 1 SCC 449 : AIR 1952 SC 179, held:

> *"**14.** The records of the case do not disclose any error apparent on the face of the proceeding or any irregularity in the procedure adopted by the Labour Commissioner which goes contrary to the principles of natural justice. Thus there was absolutely no grounds here which would justify a superior court in issuing a writ of certiorari for removal of an order or proceeding of an inferior tribunal vested with powers to exercise judicial or quasi-judicial functions. What the High Court has done really is to exercise the powers of an appellate court and correct what it considered to be an error in the decision of the Labour Commissioner. This obviously it cannot do. The position might have been different if the Labour Commissioner had omitted to decide a matter which he was bound to decide and in such cases a mandamus might legitimately issue commanding the authority to determine questions which it left undecided [Board of Education v. Rice, 1911 AC 179 (HL)] ; but no certiorari is available to quash a decision passed with jurisdiction by an inferior tribunal on the mere ground that such decision is erroneous. The judgment of the High Court, therefore, in our opinion, is plainly unsustainable.*
>
> (Emphasis supplied)

72. In another case, the same Court held:

> *""A certiorari cannot be granted to quash the decision of the appellate tribunal on these points on the ground that the*

decision is wrong" - 'Ebrahim Aboobakar v. The Custodian General of Evacuee Property', 1952 Mad W.N. 502 (SC)."

73. It is, therefore, clear that in all findings on matters of fact and interpretation of law except in cases of defective jurisdiction, the decision of the tribunal must be deemed to be final.

74. The position is authoritatively summed up in Halsbury's Laws of England Vol.IX in para 1493 where it is laid down thus:

> *"**1493.** Where the proceedings are regular upon their face and the magistrates had jurisdiction, the superior court will not grant the writ of certiorari on the ground that the Court below has misconceived a point of law. When the Court below has jurisdiction to decide a matter, it cannot be deemed to exceed or abuse its jurisdiction, merely because it incidentally misconstrues a statute, or admits illegal evidence, or rejects legal evidence, or misdirects itself as to the weight of the evidence, or convicts without evidence. Nor will certiorari be granted to quash the decision of an inferior court within its jurisdiction on the ground that the decision is wrong in matters of fact, and the Court will not hear evidence impeaching the decision on the facts. …."*

75. Similarly in the case reported in - '***Colonial Bank of Australasia v. Willan***', (1874) LR 5 PC 417, it is observed by their Lordships thus: "The question is whether the inferior court has jurisdiction to enter upon the enquiry and not whether there has been miscarriage of the procedure in the course of enquiry." At page 443 of the same case, the learned Judges observed - "An adjudication by a Judge having jurisdiction over the subject-matter is, if no defect appears on the face of it, to be taken as conclusive of facts stated therein. "The case in (1874) LR 5 PC 417 has been approvingly cited by Fazl Ali, J. who held - '***Rai Brij Raj Krishna and Another v.***

Messrs S.K. Shaw and Brothers', AIR 1951 SC 115 that an error of law does not constitute an error of jurisdiction and that a wrong decision on facts or law cannot be questioned in a civil Court.

76. It being open to the tribunals to come to one or the other conclusion on the materials before them, it cannot by any means be said that the decisions are incorrect so as to attract the extraordinary jurisdiction for interference by a writ of certiorari. In a King's Bench decision in ***R. v. Brighton and Area Rent Tribunal***, (1950) 1 All England Reporter 946, Lord Goddard, CJ. observed that:

> *"… As the tribunal had observed all the formalities of the Act, had offended against none of its provisions or against the regulations made under it, there was no ground for holding that the tribunal's determination was not in accordance with law, and, therefore, the motions for certiorari and mandamus should be refused"*.

77. The purpose of certiorari, as we understand, is only to confine the inferior tribunals within their jurisdiction, so as to avoid the irregular exercise, or the non-exercise or the illegal assumption of it and not to correct errors of finding of fact or interpretation of law committed by them in the exercise of powers vested in them under the statute. The accepted rule is that where a Court has jurisdiction it has a right to decide every question which crops up in the case and whether its decision is correct or otherwise, it is bound to stand until reversed by a competent Court. This Court in ***G. Veerappa Pillai v. Messrs Raman and Raman Ltd***. ***Kumbakonam, Tanjore District and Others,*** (1952) 1 SCC 334 observed:

> *"**26.** Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases*

where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a court of appeal and examine for itself the correctness of the decision impugned and decide what is the proper view to be taken or the order to be made."

78. In view of the aforesaid discussion, we have reached to the conclusion that the impugned order passed by the High Court is not sustainable in law and the same deserves to be set aside.

79. In the result, the present appeal is allowed. The impugned order passed by the High Court dated 17.12.2020 in the Writ Petition (C) No. 30620 of 2020 is set aside.

80. No order as to costs.

81. The interim application filed by the intervenors also stands disposed.

…….. CJI.
(Dr. Dhananjaya Y. Chandrachud)

…….. J.
(J.B. Pardiwala)

New Delhi;
August 16, 2023.